

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,	:	Case No. 3:13-cr-98
	:	
Plaintiff,	:	Judge Thomas M. Rose
	:	
- VS -	:	
	:	
THOMAS GENE JORDAN, JR.,	:	
	:	
Defendant.	:	

**INDICATIVE RULING ON MOTION FOR RELIEF THAT IS BARRED
BY A PENDING APPEAL UNDER FED. R. CIV. P. 62.1**

This case is before the Court on Defendant Thomas Gene Jordan, Jr.'s Motion for Reconsideration (Doc. 76) of the Court's Order dismissing with prejudice his Motion to Correct Sentence under 28 U.S.C. § 2255 (Doc. 66). United States Magistrate Judge Michael R. Merz initially entered a Report and Recommendations (Doc. 77) recommending that the Court deny the Motion for Reconsideration. After the Court's initial review of Jordan's Objections (Doc. 78) to the Report and Recommendations, the Court recommitted (Doc. 79) the matter to the Magistrate Judge for further consideration. Magistrate Judge Merz then entered a Supplemental Report and Recommendations (Doc. 80), in which he found that the Motion for Reconsideration should be granted due to the excusable neglect of Jordan's counsel under Fed. R. Civ. P. 60(b)(1).

The matter is not that simple, however, because Jordan has already filed an appeal of Court's Order dismissing with prejudice his § 2255 motion. As a result, the Court does not have jurisdiction to enter an order granting the Motion for Reconsideration at this time. The Magistrate Judge therefore recommended that the Court instead enter an indicative ruling under

Fed. R. Civ. P. 62.1 stating the Court would enter an order granting the Motion for Reconsideration if the United States Court of Appeals for the Sixth Circuit remanded the case for that purpose.

The Court has reviewed the Motion for Reconsideration (Doc. 76), the Report and Recommendations (Doc. 77) and Supplemental Report and Recommendations (Doc. 80), and Jordan's Objections (Docs. 78, 81) to each of them. Upon review, the Court agrees with the Magistrate Judge's analysis and conclusions in the Supplemental Report and Recommendations. The Court further notes that Jordan does not object to the recommendation that his Motion for Reconsideration be granted. Rather, Jordan's Objections (Doc. 81) to the Supplemental Report and Recommendations are actually directed to the Court's consideration of the merits of his § 2255 motion. Accordingly, the Court hereby enters the following indicative ruling pursuant to Fed. R. Civ. P. 62.1:

- 1) If the United States Court of Appeals for the Sixth Circuit remanded this case for purposes of considering Jordan's Motion for Reconsideration (Doc. 76), the Court would grant that motion.
- 2) The Court reminds Jordan of his obligation under Fed. R. Civ. P. 62.1(b) to "promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1" that this Court would grant the Motion for Reconsideration (Doc. 76) if the case were remanded for that purpose.

DONE and ORDERED in Dayton, Ohio, this Tuesday, December 20, 2016.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE